

EXHIBIT 123

**Students for Fair Admissions, Inc. v. President and Fellows of
Harvard College, et al., No. 14-14176-ADB, U.S. District Court,
District of Massachusetts, Transcript of Bench Trial – Day 6,
October 22, 2018**

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 STUDENTS FOR FAIR ADMISSIONS, INC.,

5 Plaintiff,

Civil Action
No. 14-14176-ADB

6 v.

October 22, 2018

7 PRESIDENT AND FELLOWS OF HARVARD
8 COLLEGE, et al.,

Pages 1 to 231

9 Defendants.
10

11 TRANSCRIPT OF BENCH TRIAL - DAY 6
12 BEFORE THE HONORABLE ALLISON D. BURROUGHS
13 UNITED STATES DISTRICT COURT
14 JOHN J. MOAKLEY U.S. COURTHOUSE
15 ONE COURTHOUSE WAY
16 BOSTON, MA 02210
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22 JOAN M. DALY, RMR, CRR
23 Official Court Reporter
24 John J. Moakley U.S. Courthouse
25 One Courthouse Way, Room 5507
Boston, MA 02210
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1 **Q.** Well, let's make it more specific.

2 You have described Harvard's racial diversity as --
3 and I have it written down here -- a vibrant level of racial
4 diversity, correct?

5 **A.** That sounds right.

6 **Q.** Harvard has made a decision to have a vibrant level of
7 racial diversity, correct?

8 **A.** Right.

9 **Q.** Harvard's made a decision that in order to have a vibrant
10 level of diversity it considers race as a factor in the
11 admissions process, correct?

12 **A.** Correct.

13 **Q.** Now, you agree that Harvard as an interest in achieving
14 that vibrant level of diversity, correct?

15 **A.** Not the specific level that they have today, but in
16 general, yes, they have an interest in achieving racial
17 diversity.

18 **Q.** Fair enough. I understand what you're saying. So let's
19 set aside the specific level.

20 **A.** Right.

21 **Q.** You agree that Harvard as an interest in having a vibrant
22 level of diversity, correct?

23 **A.** So I guess the word "vibrant" is a little amorphous, but
24 I think it has a compelling interest in getting the
25 educational benefits of a diverse university.

1 **Q.** I'm using "vibrant" only because it was your word, but
2 let's use "compelling."

3 Harvard has a compelling interest in having a
4 diverse community, correct?

5 **A.** Yes.

6 **Q.** Diverse along racial lines, corrects?

7 **A.** Among the many factors, yes.

8 **Q.** Racial, ethnic, religious, political, socioeconomic, it
9 has a compelling interest in being diverse across all of
10 those different factors, correct?

11 **A.** "Compelling" is kind of a term of art in this field. So
12 I'm not sure all of those things -- I think the Supreme Court
13 has spoken to compelling interest in diversity.

14 **Q.** I said it was vibrant because it was your word. I was
15 trying to use "compelling" because it was your word.

16 But to be precise, at least as we focus on race,
17 you agree that Harvard has a compelling interest in having
18 racial diversity on its campus?

19 **A.** There, we will agree, yes.

20 **Q.** Now, and you agree that there are educational benefits to
21 having racial diversity on campus, correct?

22 **A.** Correct.

23 **Q.** And I think you told us it not only matters on campus, it
24 matters in our society, correct?

25 **A.** That's correct.

1 **Q.** It matters, if I have it written down correctly -- if I
2 have your words written down correctly, it matters to our
3 democracy, correct?

4 **A.** That's correct.

5 **Q.** Now, you know that Harvard considers race as one factor
6 among many in its admissions process, correct?

7 **A.** I do.

8 **Q.** For some applicants, race is used as a plus factor,
9 correct?

10 **A.** That's correct.

11 **Q.** Now, you told Her Honor you have a law degree, correct?

12 **A.** I have a law degree, yes.

13 **Q.** In your report -- you gave us two reports, an opening
14 report and a rebuttal report, correct?

15 **A.** There are actually three.

16 **Q.** Three. I'm sorry. I apologize.

17 In your rebuttal report, you specifically referred
18 to the *Bakke* decision, do you not?

19 **A.** I don't remember specifically, but it sounds right.

20 **Q.** Turn, if you would, to Tab 10 in your notebook, which is
21 your rebuttal report. And I'd like to go to page 14,
22 Footnote 55. This is your rebuttal report, correct?

23 **A.** That's correct.

24 **Q.** I'm putting page 14 on the screen, correct?

25 **A.** Yes.